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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H-2008-386

ROBERT ANDREW WALKER
1631 Roanoke
Placentia, CA 92870

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California.

2. On or about July 7, 2008, the Respiratory Care Board of California (Board) received a complete application for a Respiratory Care Practitioner License from ROBERT ANDREW WALKER (Respondent). On or about June 12, 2008, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on or about January 21, 2009.

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JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...”

7. Section 3732 of the Code states:

“(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

“(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

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1 8. Section 3752 of the Code states,

2 “A plea or verdict of guilty or a conviction following a plea of nolo
3 contendere made to a charge of any offense which substantially relates to
4 the qualifications, functions, or duties of a respiratory care practitioner is
5 deemed to be a conviction within the meaning of this article. The board
6 shall order the license suspended or revoked, or may decline to issue a
7 license, when the time for appeal has elapsed, or the judgment of
8 conviction has been affirmed on appeal or when an order granting
9 probation is made suspending the imposition of sentence, irrespective of a
10 subsequent order under Section 1203.4 of the Penal Code allowing the
11 person to withdraw his or her plea of guilty and to enter a plea of not guilty,
12 or setting aside the verdict of guilty, or dismissing the accusation,
13 information, or indictment.”

14 9. Section 3752.5 of the Code states:

15 “For purposes of Division 1.5 (commencing with Section 475), and
16 this chapter [the Respiratory Care Practice Act], a crime involving bodily
17 injury or attempted bodily injury shall be considered a crime substantially
18 related to the qualifications, functions, or duties of a respiratory care
19 practitioner.”

20 10. Section 3754 of the Code states: “The board may deny an
21 application for, or issue with terms and conditions, or suspend or revoke, or impose
22 probationary conditions upon, a license in any decision made after a hearing, as provided
23 in Section 3753.”

24 11. California Code of Regulations, title 16, section 1399.370, states, in
25 pertinent part:

26 “For the purposes of denial, suspension, or revocation of a license, a
27 crime or act shall be considered to be substantially related to the
28 qualifications, functions or duties of a respiratory care practitioner, if it

1 evidences present or potential unfitness of a licensee to perform the
2 functions authorized by his or her license or in a manner inconsistent with
3 the public health, safety, or welfare. Such crimes or acts include but are not
4 limited to those involving the following:

5 (a) Violating or attempting to violate, directly or indirectly, or
6 assisting or abetting the violation of or conspiring to violate any provision
7 or term of the Act.

8 “...

9 (c) Conviction of a crime involving driving under the influence or
10 reckless driving while under the influence.

11 “...”

12 **COST RECOVERY**

13 12. Section 3753.5, subdivision (a) of the Code states:

14 “In any order issued in resolution of a disciplinary proceeding
15 before the board, the board or the administrative law judge may direct any
16 practitioner or applicant found to have committed a violation or violations
17 of law to pay to the board a sum not to exceed the costs of the investigation
18 and prosecution of the case.”

19 13. Section 3753.7 of the Code states:

20 “For purposes of the Respiratory Care Practice Act, costs of
21 prosecution shall include attorney general or other prosecuting attorney
22 fees, expert witness fees, and other administrative, filing, and service fees.”

23 14. Section 3753.1 of the Code states:

24 “(a) An administrative disciplinary decision imposing terms of
25 probation may include, among other things, a requirement that the
26 licensee-probationer pay the monetary costs associated with monitoring the
27 probation.

28 “...”

1 **FIRST CAUSE FOR DENIAL OF LICENSE**
2 (Conviction of Crimes Substantially Related to the Qualifications,
3 Functions, or Duties of a Respiratory Care Practitioner)

4 15. Respondent's application is subject to denial under section 3750, as
5 defined by section 3750, subdivision (d), and 3752.5 of the Code, and Title 16 of the
6 California Code of Regulations, section 1399.370, in that Respondent has been convicted
7 of crimes substantially related to the qualifications, functions, or duties of a Respiratory
8 Care Practitioner, as more particularly described in paragraphs 16 through 19, below.

9 16. On or about May 4, 2003, Respondent was arrested for
10 violations of Vehicle Code section 2800.1 (a) [eluding a pursuing peace officer], and
11 Vehicle Code section 23152 (a) [driving under the influence of alcohol].

12 17. On or about May 6, 2003, Respondent was charged in the case
13 entitled *People of the State of California v. Robert Andrew Walker*, Orange County
14 Superior Court Case No. 03NM06062, with violations of Vehicle Code section 2800.1 (a)
15 [eluding a pursuing peace officer], Vehicle Code section 23152 (a) [driving under the
16 influence of alcohol], and Vehicle Code section 23152 (b) [driving with a blood alcohol
17 level of .08 or higher].

18 18. On or about May 6, 2003, Respondent pled guilty to violations of
19 Vehicle Code section 2800.1 (a) [eluding a pursuing peace officer], Vehicle Code section
20 23152 (a) [driving under the influence of alcohol], and Vehicle Code section 23152 (b)
21 [driving with a blood alcohol level of .08 or higher], in the case entitled *People of the State*
22 *of California v. Robert Andrew Walker*, Orange County Superior Court Case No.
23 03NM06062.

24 19. On or about May 6, 2003, the Court sentenced Respondent in Case
25 03NM06062 to three (3) days in County jail, three (3) years informal probation, and pay a
26 fine with penalty assessments totaling \$ 390.00.

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1 **SECOND CAUSE FOR DENIAL OF LICENSE**

2 (Conviction of a Crime Involving Driving Under the Influence)

3 20. Respondent's application is further subject to denial under section
4 3750, as defined by section 3750, subdivision (d), as defined by California Code of
5 Regulations section 1399.370, subdivision (c), in that he was convicted of a crime
6 involving driving under the influence of alcohol, as more particularly described in
7 paragraphs 16 through 19, above, which are hereby incorporated by reference and
8 realleged as if fully set forth herein.

9 **FACTORS IN AGGRAVATION**

10 21. Complainant alleges that on or about August 10, 2005 in a previous
11 disciplinary action entitled "IN THE MATTER OF APPLICATION FOR NURSING
12 ASSISTANT CERTIFICATION OF: ROBERT A. WALKER" Case No. 0412029, the
13 Arizona State Board of Nursing entered into a Consent Agreement and Order wherein
14 Respondent's Application for an Arizona Nursing License was granted conditioned on
15 Respondent paying a \$50.00 civil penalty based on his California Conviction in the case
16 entitled *People of the State of California v. Robert Andrew Walker*, Orange County
17 Superior Court Case No. 03NM06062.

18 In Respondent's written statement dated May 19, 2008, Respondent
19 admits being arrested and convicted of sexual misconduct with a minor, alcohol charges,
20 marijuana charges, and assault. Respondent states these arrests and convictions occurred
21 twenty-two (22) years ago.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Denying the application of Respondent for a Respiratory Care Practitioner License;
2. Directing Respondent to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: April 15, 2009

Original signed by Colleen Whitestine for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
State of California
Complainant

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